

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff and Respondent,

No. CR 04-0163 PJH
C 07-4467 PJH/07-5943 PJH

v.

ORDER ON MOTIONS

DION LEROY JOHNSON,

Defendant and Movant.

1. Petitioner's motion to proceed in forma pauperis filed September 6, 2007, in C 07-4467 is DENIED based on the funds available in his prisoner account.

2. In response to petitioner's September 24, 2007 letter in C 07-4467 requesting notification regarding the name of appointed counsel, the court advises petitioner that the Sixth Amendment's right to counsel does not apply in the instant post-conviction proceedings. *See Knaubert v. Goldsmith*, 791 F.2d 722, 728 (9th Cir. 1986). Additionally, based on its review of petitioner's filings, the court finds that the interests of justice do not require the appointment of counsel in the instant proceedings. *See* 18 U.S.C. § 3006A(g).

3. Petitioner's November 9, 2007, motion to amend his 18 U.S.C. § 2255 motion (erroneously titled a motion to amend a § 2241 petition) filed in C 07-4467 is DENIED. The attached amended motion is duplicative of the § 2255 motions already filed in C 07-5943 and C 07-4467, and consolidated by this court's January 15, 2008 order.

4. The court GRANTS petitioner's November 9, 2007 letter request for copies of the original petition filed in C 07-4467 (formerly SBA, now PJH) and a copy of the current

1 docket sheet for that case. The court directs the clerk of the court to provide petitioner with
2 those copies.

3 5. The court further notes that in addition to the § 2255 petitions filed in C 07-
4 4467 PJH and 07-5943 PJH, on November 9, 2007, petitioner filed a separate petition
5 under 28 U.S.C. § 2241 in case no. C 07-4467 requesting transfer back to the Northern
6 District of California from Beaumont, Texas. This petition which, unlike the other § 2255
7 petitions, challenges the *execution* of petitioner's sentence is properly construed as a §
8 2241 petition. See *United States v. Giddings*, 740 F.2d 770, 772 (9th Cir. 1984).

9 Liberally construed, this claim appears colorable under 28 U.S.C. § 2241 and merits
10 an answer from respondent. The court has not yet issued an order to show cause as to
11 this petition. Accordingly, respondents shall file with the court and serve on petitioner, **no**
12 **later than February 15, 2008**, an answer showing cause why a writ of habeas corpus
13 should not be issued as to petitioner's § 2241 claim only. Respondent shall file with the
14 answer and serve on petitioner a copy of all portions of the record that are relevant to a
15 determination of the issues presented by the petition. If the petitioner wishes to respond to
16 the answer, he shall do so by filing a reply with the court and serving it on respondent **no**
17 **later than March 17, 2008**.

18
19 **IT IS SO ORDERED.**

20
21 Dated: January 17, 2008



22
23 _____
PHYLLIS J. HAMILTON
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

JOHNSON et al,

Plaintiff,

v.

COPENHAGEN et al,

Defendant.

Case Number: CV07-04467 PJH

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on January 17, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Dion L. Johnson Reg. #88889-011
Federal Correction Institution
FCC Beaumont Medium
P.O. Box 26040
Beaumont, TX 77720

Dated: January 17, 2008

Richard W. Wieking, Clerk
By: Frank Justiliano, Deputy Clerk